

FILED

AUG 02 2013 *MB*

THOMAS G BRUTON
CLERK, U S DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MANUEL SUASTEGUI #244684
(Full name and prison number)
(Include name under which convicted)
PETITIONER

vs.

GREGORY GUSSETT (WARDEN)
(Warden, Superintendent, or authorized
person having custody of petitioner)
CUSTODIAN, and

(Fill in the following blank only if judgment
attacked imposes a sentence to commence
in the future)

ATTORNEY GENERAL OF THE STATE OF

(State where judgment entered)

13 C 5539
Judge John J. Tharp, Jr.
Magistrate Judge Young B. Kim

Case Number of State Court Conviction:

99CR21790(02)

PETITION FOR WRIT OF HABEAS CORPUS – PERSON IN STATE CUSTODY

1. Name and location of court where conviction entered:

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2. Date of judgment of conviction:

NOVEMBER 20, 2003

3. Offense(s) of which petitioner was convicted (list all counts with indictment numbers, if known)

FIRST DEGREE MURDER

4. Sentence(s) imposed:

45 YEARS

5. What was your plea? (Check one)

(A) Not guilty

(B) Guilty

(C) Nolo contendere

☒

☐

☐

If you pleaded guilty to one count or indictment and not guilty to another count or indictment, give details:

N/A

PART I - TRIAL AND DIRECT REVIEW

1. Kind of trial: (Check one): Jury (☒) Judge only ()
2. Did you testify at trial? YES () NO (☒)
3. Did you appeal from the conviction or the sentence imposed? YES (☒) NO ()

(A) If you appealed, give the

(1) Name of court: APPELLATE COURT OF ILLINOIS (1ST DIST) NO. 1-05-2429(2) Result: CONVICTION AFFIRMED (ORAL ARGUMENTS MAY 30 2007)(3) Date of ruling: JUNE 13, 2007 / PEO. V. SUASTEBUL 871 N.E. 2d 145

(4) Issues raised:

1) COURT ERRED IN DENIAL OF MOTION TO DISMISS INDICTMENT. 2) COURT ERRED IN EXCLUDING EXCULPATORY EVIDENCE. 3) INSUFFICIENT EVIDENCE TO SUSTAIN CONVICTION. 4) 6TH AMEND.VIOLATION WHEN TESTIMONIAL EVIDENCE WAS ADMITTED WITHOUT THE OPPORTUNITY FOR CROSS-EXAMINATION. 5) ADMISSION OF PREJUDICIAL PHOTOS OF GANG TATTOOS.

(B) If you did not appeal, explain briefly why not:

N/A

4. Did you appeal, or seek leave to appeal, to the highest state court? YES (
- ☒
-) NO ()

() If yes, give the

(1) Result: ILLINOIS SUPREME COURT PETITION FOR LEAVE TO APPEAL DENIED - NO. 105227(2) Date of ruling: NOVEMBER 29, 2007(3) Issues raised: 6TH AMEND. VIOLATION WHEN TESTIMONIAL EVIDENCE WAS ADMITTED WITHOUT THE OPPORTUNITY FOR CROSS-EXAMINATION. 2) INSUFFICIENT EVIDENCE TO SUSTAIN CONVICTION. 3) COURT ERRED IN ~~EXCLUDING~~ EXCLUDING EXCULPATORY EVIDENCE.(B) If no, why not: N/A

5. Did you petition the United States Supreme Court for a writ of certiorari? Yes () No (
- ☒
-)

If yes, give (A) date of petition: N/A (B) date certiorari was denied: N/A

PART II – COLLATERAL PROCEEDINGS

- I. With respect to this conviction or sentence, have you filed a post-conviction petition in state court?

YES (X) NO ()

With respect to *each* post-conviction petition give the following information (use additional sheets if necessary):

- A. Name of court: CIRCUIT COURT OF COOK COUNTY, ILLINOIS
- B. Date of filing: MAY 23, 2008
- C. Issues raised: 1) PETITIONER WAS DENIED DUE PROCESS RIGHT UNDER BRADY V. MARYLAND IN LIGHT OF NEWLY DISCOVERED EVIDENCE AND BY ALLOWING PROSECUTION'S KEY WITNESS PERJURED TESTIMONY IN DENYING ANY PROMISE OF LENIENCY (CONTINUE ON ATTACHED PAGE 8)
- D. Did you receive an evidentiary hearing on your petition? YES () NO (X)
- E. What was the court's ruling? SECOND STAGE DISMISSAL
- F. Date of court's ruling: APRIL 27, 2011
- G. Did you appeal from the ruling on your petition? YES (X) NO ()
- H. (a) If yes, (1) what was the result? APPELLATE DEFENDER FILED . . (CONTINUE ON ATTACHED PAGE 9)
 (2) date of decision: NOVEMBER 5, 2012
- (b) If no, explain briefly why not: N/A
- I. Did you appeal, or seek leave to appeal this decision to the highest state court?
 YES (X) NO ()
- (a) If yes, (1) what was the result? LEAVE TO APPEAL DENIED - NO. 115448
 (2) date of decision: MARCH 27, 2013
- (b) If no, explain briefly why not:

N/A

2. With respect to this conviction or sentence, have you filed a petition in a **state court** using any other form of post-conviction procedure, such as *coram nobis* or habeas corpus? YES () NO (X)

A. If yes, give the following information with respect to each proceeding (use separate sheets if necessary):

1. Nature of proceeding N/A
2. Date petition filed N/A
3. Ruling on the petition N/A
4. Date of ruling N/A
5. If you appealed, what was the ruling on appeal? N/A
6. Date of ruling on appeal N/A
7. If there was a further appeal, what was the ruling? N/A
8. Date of ruling on appeal N/A

3. With respect to this conviction or sentence, have you filed a previous petition for habeas corpus in **federal court**? YES () NO (X)

A. If yes, give name of court, case title and case number: N/A

B. Did the court rule on your petition? If so, state

- (1) Ruling: N/A
- (2) Date: N/A

4. With respect to this conviction or sentence, are there legal proceedings pending in any court, other than this petition? YES () NO (X)

If yes, explain:

N/A

PART III – PETITIONER'S CLAIMS

1. State briefly every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. You may attach additional pages stating additional grounds and supporting facts. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds later.

BEFORE PROCEEDING IN THE FEDERAL COURT, YOU MUST ORDINARILY FIRST EXHAUST YOUR STATE COURT REMEDIES WITH RESPECT TO EACH GROUND FOR RELIEF ASSERTED.

- (A) Ground one 14TH AMENDMENT VIOLATION UNDER BRADY V MARYLAND 83 S.Ct. 1194
Supporting facts (tell your story briefly without citing cases or law):

THE PROSECUTION WITHHELD IMPEACHING EVIDENCE REGARDING THEIR KEY WITNESS IGNACIO SALGADO AS HE WAS THE ONLY WITNESS IMPLICATING PETITIONER SWASTEGU IN THIS CASE WHICH TOOK PLACE IN SEPTEMBER '95. SALGADO WAS ARRESTED ON JANUARY '98 FOR AT LEAST 2 DRUG OFFENCES (DELIVERIES) IN A STING OPERATION CONDUCTED BY THE CHICAGO POLICE. ACCORDING TO SALGADO'S TRIAL TESTIMONY "HE" SOUGHT OUT THE DETECTIVES TO RELATE THE ALLEGED EVENTS ABOUT THIS CASE. (SEE EXHIBIT-1) ON AUGUST 12 '98 SALGADO'S CASES WERE RESOLVED BY A PLEA OF GUILTY AND RECEIVED 30 MONTHS PROBATION, 130 HOURS OF COMMUNITY SERVICE, DRUG TESTING AND TREATMENT. (SEE EXHIBITS 2, 2A) PETITIONER WAS ARRESTED SEPTEMBER 1 '99, OVER A YEAR AFTER SALGADO'S STATEMENTS TO POLICE. ON MAY 11, 2000, WHILE PETITIONER WAS AWAITING TRIAL, A VIOLATION OF PROBATION WAS FILED BY... (CONTINUE ON ATTACHED PAGE 9)

- (B) Ground two 6TH AMENDMENT VIOLATION, INEFFECTIVE ASSISTANCE OF TRIAL AND
Supporting facts: APPELLATE COUNSEL.

TRIAL COUNSEL WAS INEFFECTIVE BECAUSE HE FAILED TO INVESTIGATE AND DISCLOSE IMPEACHING EVIDENCE THAT WAS READILY AVAILABLE TO CONFRONT PROSECUTION'S KEY WITNESS. SPECIFICALLY, (I) SALGADO'S USE (POSSESSION) OF COCAINE AND MARIJUANA DURING HIS PROBATION, (II) POSITIVE DRUG TESTS FOR COCAINE AND MARIJUANA, (III) HAVING COMPLETED 22 MONTHS (NOT 1 YEAR AS HE TOLD THE JURY) OF HIS 30 MONTHS PROBATION, (IV) LIEING ABOUT PROVIDING PROOF OF WORKING 55 HRS A WEEK WHICH ALLEGEDLY EXCUSED HIS INCOMPLETE COMMUNITY SERVICE AND (V) THAT WHILE HE APPEARED IN COURT FOR HIS VIOLATION OF PROBATION HEARING HE ADMITTED TO THE COURT THAT HE WAS UNDER THE INFLUENCE OF DRUGS AND WOULD TEST POSITIVE FOR DRUGS, ALL WITHOUT CONSEQUENCE. COUNSEL COULD'VE PROCURED RECORD OF TRANSCRIPTS TO IMPEACH PROSECUTION'S KEY WITNESS BUT HE DID NOT. (CONTINUE ON ATTACHED PAGE 11)

PART IV – REPRESENTATION

Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (A) At preliminary hearing GEORGE E. BECKER - 33 N. LA SALLE ST. (S. 3300) CHI. IL. 60602
- (B) At arraignment and plea JOSEPH R. LOPEZ - 53 N. JACKSON BLVD (S. 1651) CHI. IL. 60604
- (C) At trial JOSEPH R. LOPEZ - 53 N JACKSON BLVD (S. 1651) CHICAGO, IL. 60604
- (D) At sentencing THOMAS C. BRANDSTRADER - 53 N. JACKSON BLVD (S. 615) CHI. IL. 60604
- (E) On appeal THOMAS C. BRANDSTRADER - 53 N. JACKSON BLVD (S. 615) CHI. IL. 60604
- (F) In any postconviction proceeding TIMOTHY J. LEEMING (P.O.) 69 N. WASHINGTON ST. 15TH FL CHI.
- (G) Other (state): KRISTINE A. NEAL (APP. DEFENDER) 203 N. LA SALLE ST (24TH FLR) CHI.

PART V – FUTURE SENTENCE

Do you have any future sentence to serve following the sentence imposed by this conviction?

YES () NO (X)

Name and location of the court which imposed the sentence: N/A

Date and length of sentence to be served in the future N/A

WHEREFORE, petitioner prays that the court grant petitioner all relief to which he may be entitled in this proceeding.

Signed on: 7/19/13
(Date)

Signature of attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct.

M. L. S. Tz
(Signature of petitioner)

R44684
(I.D. Number)

IRCC P.O. BOX 999 CANTON, IL. 61520
(Address)

PART II - COLATERAL PROCEEDINGS (CONTINUED)

- 1) C. ISSUES RAISED: AND BY FAILING TO DISCLOSE IMPEACHING EVIDENCE THAT BORE DIRECTLY ON THE PROSECUTION'S KEY WITNESS' CREDIBILITY AND INTEREST TO TESTIFY FALSELY.
- 2) PETITIONER WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE 6TH AMENDMENT TO THE U.S. CONSTITUTION WHEN TRIAL AND APPELLATE COUNSEL FAILED TO INVESTIGATE AND DISCLOSE IMPEACHING EVIDENCE THAT WAS READILY AVAILABLE.
- 3) PETITIONER WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL AND ON APPEAL BECAUSE COUNSEL FAILED TO PETITION THE COURT TO RECONSIDER IT'S RULING OF DENIAL OF PETITIONER'S PRE-TRIAL MOTION TO QUASH ARREST UPON ANDY MONTANEZ' RECATATION OF HIS STATEMENTS AND REFUSAL TO TESTIFY AT TRIAL AND TENACIO SALGADO'S TRIAL TESTIMONY WHICH LACKED INDICIA OF RELIABILITY AND 4TH AMENDMENT AND 14TH AMENDMENT VIOLATION FOR WARRANTLESS ARREST.
- 4) PETITIONER WAS DENIED HIS RIGHT TO DUE PROCESS AND FAIR TRIAL UNDER THE 14TH AND 6TH AMENDMENTS TO THE U.S. CONSTITUTION WHEN THE TRIAL COURT DECLINED TO ANSWER JURY QUESTIONS OF RELEVANT FACT AND COURT/PROSECUTION ADMITTED EVIDENCE IN MID-TRIAL THUS CONFUSING THE JURY DURING DELIVERATIONS REGARDING QUESTIONS AND INTERFERING WITH DEFENSE TRIAL STRATEGY AND PREJUDICED THE OUTCOME OF THE TRIAL.
- 5) PETITIONER WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL FOR NOT PRESERVING THE AFOREMENTIONED ISSUES BY OBJECTION AND NOT PRESENTING THESE ISSUES ON POST-TRIAL MOTION AND ON DIRECT APPEAL FOR REVIEW.

PART II - COLLATERAL PROCEEDINGS (CONTINUED)

H) A MOTION TO WITHDRAW PURSUANT TO PENNSYLVANIA V. FINLEY 431 U.S. 557 (1987) BASED ON HER CONCLUSION THAT AN APPEAL IN THIS CASE WOULD BE WITHOUT A REASONABLE MERIT. PETITIONER DISAGREES AND FILED A RESPONSE OBJECTING TO SAID MOTION WITH THE APPELLATE COURT. THE MOTION OF STATE APPELLATE DEFENDER FOR LEAVE TO WITHDRAW AS COUNSEL WAS GRANTED BY THE APPELLATE COURT AND AFFIRMED THE ORDER OF THE CIRCUIT COURT OF SECOND STAGE DISMISSAL OF POST-CONVICTION PETITION. (APPELLATE COURT NO. 1-11-1307)

PART III - PETITIONERS CLAIMS (CONTINUED)

A) THE PROBATION DEPARTMENT FOR VIOLATING ALL THE CONDITIONS OF HIS PROBATION (SEE EXHIBIT 3 - SALGADO'S RECORD OF PROCEEDINGS AT HIS V.C.P. HEARING FOR HIS DRUG CASES) AT TRIAL, THE PROSECUTION CONCEDED TO THE JURY THAT SALGADO VIOLATED PROBATION BY NOT COMPLETING HIS COMMUNITY SERVICE BUT WITHHELD THE POSITIVE DRUG TESTS FOR MARIJUANA AND COCAINE. SALGADO'S TRIAL TESTIMONY WAS THAT HE WAS UNABLE TO COMPLETE HIS COMMUNITY SERVICE BECAUSE HE WAS WORKING 55 HOURS A WEEK AND INDICATED THAT UPON THE JUDGE'S REQUEST AT THE V.C.P. HEARING HE (SALGADO) WAS TO GET VERIFICATION THAT HE IS WORKING 55 HOURS A WEEK FOR HIS COMMUNITY SERVICE TO BE VACATED. SALGADO CONCEDED TO THE JURY THAT HE SHOWED PROOF OF HIS WORK HOURS, BUT HE NEVER DID (SEE EXHIBITS 4, 4A) IN SPITE OF HIS SERIOUS VIOLATIONS OF PROBATION, THE PROSECUTION IN SALGADO'S V.C.P. HEARING DID NOT OBJECT, DID NOT RECOMMEND ANY SANCTIONS OR MADE ANY ATTEMPT TO IMPOSE ANY PENALIZATION FOR HIS CONDUCT. ALL OF THIS IMPEACHING EVIDENCE WAS NOT PRESENTED TO THE JURY BUT THEY WERE MISLED. SALGADO ALSO TESTIFIED THAT HE DID ONLY ONE YEAR OF PROBATION BUT RECORDS REVEAL THAT HE DID 22 MONTHS OF PROBATION. SALGADO HAD A STRONG MOTIVE TO IMPLICATE THE PETITIONER IN THIS CASE AND EVEN A

STRONGER MOTIVE TO TESTIFY FALSELY AT TRIAL, I.E., HIS OWN SELF INTEREST IN AVOIDING PRISON TIME FOR 2 DRUG CASES AND PRACTICALLY GUARANTEED BY VIOLATING HIS PROBATION.

FURTHERMORE, AT THE HEARING FOR SALGADO'S V.O.P. HE INDICATED TO THE COURT THAT HE WOULD TEST POSITIVE FOR MARIJUANA ON THAT DAY. THE JUDGE ORDERED HIM TESTED IN A MONTH. THE JUDGE SUGGESTED, "THAT STUFF (DRUGS) STAYS IN THEIR SYSTEM FOR ABOUT 28 DAYS. ISN'T THERE SOMETHING YOU CAN BUY AT WALGREENS THAT COVERS THIS, GOLD SEAL OR SOMETHING? AT LEAST YOU HAVE BEEN COVERING STUFF LIKE THIS." (PLEASE SEE EXHIBIT 3 - MAY 11, 2000, TRANSCRIPTS OF PROCEEDINGS, PAGES 6-7) WOULD A JURY FIND THAT PROSECUTION WITNESS SALGADO WAS GETTING SPECIAL TREATMENT? IT IS IMPORTANT TO POINT OUT THAT THERE IS NO RECORDS OF ANY RESULTS OF ANY DRUG TESTS ORDERED BY THE JUDGE OR IF IN FACT HE WAS EVER TESTED AT ALL. (SEE EXHIBIT 5 - TRANSCRIPTS OF SALGADO'S CASES) THE PROSECUTION HAD AN AFFIRMATIVE DUTY TO DISCLOSE THESE FACTS, BUT THEY DID NOT. THIS CONSTITUTIONAL VIOLATION WAS NOT CURED BY THE FACT THAT THE JURY WAS APPRAISED OF SALGADO'S CASES, HIS CONVICTIONS AND THAT HE VIOLATED HIS PROBATION. THE JURY WAS ENTITLED TO HAVE THE BENEFIT OF THE DEFENSE'S THEORY IN ITS ENTIRETY, WHICH WAS THAT SALGADO HAD A "QUID PRO QUO" WITH THE PROSECUTION FOR HIS CASES AND THAT HE RECEIVED LENIENCY ON HIS VIOLATION OF PROBATION BECAUSE HE COULD NOT TESTIFY AT PETITIONER'S TRIAL WHILE IN JAIL BECAUSE THAT COULD'VE BEEN ANOTHER FORM OF IMPEACHMENT WHICH DISCREDITED SALGADO'S RELIABILITY AS A WITNESS. THE PROSECUTION'S CASE DEPENDED ALMOST ENTIRELY ON THE STATEMENTS AND TRIAL TESTIMONY OF SALGADO AND WITHOUT IT THERE COULD HAVE BEEN NO INDICTMENT AND EVIDENCE TO CARRY THE CASE TO THE JURY. SUCH WITNESS CREDIBILITY WAS AN IMPORTANT ISSUE. IT IS IMPORTANT TO POINT OUT THAT

ALTHOUGH SALGADO WAS A KEY WITNESS, HE ONLY TESTIFIED THAT HE SAW PETITIONER SUASTECUI RUNNING FROM THE SCENE AND DID NOT TESTIFIED THAT HE SAW PETITIONER COMMIT THE MURDER. PETITIONER CONTENDS THAT HAD THE JURY BEEN APPRAISED OF ALL THE AFOREMENTIONED IMPEACHING EVIDENCE THERE IS REASONABLE PROBABILITY OF A DIFFERENT RESULT AT TRIAL AND THAT WITHHOLDING OF SAID EVIDENCE DENIED HIM OF HIS FUNDAMENTAL FAIRNESS AT TRIAL AND ANY ERROR WAS NOT HARMLESS.

PART III - PETITIONER'S CLAIMS (CONTINUED)

B) THE AFOREMENTIONED IMPEACHING ITEMS WERE PROCURED BY THE PETITIONER WITH THE HELP OF FAMILY MEMBERS. THIS EVIDENCE WAS OR SHOULD HAVE BEEN READILY AVAILABLE TO THE DEFENCE AT TRIAL. THE DECISION WHETHER TO IMPEACH A WITNESS IS GENERALLY CONSIDERED A MATTER OF TRIAL STRATEGY, AND FAILURE TO MAKE USE OF OBVIOUSLY USEFUL IMPEACHMENT EVIDENCE AGAINST A KEY WITNESS WAS A DENIAL OF EFFECTIVE ~~ASSISTANCE~~ ASSISTANCE OF COUNSEL.

APPELLATE COUNSEL WAS ALSO INEFFECTIVE BECAUSE HE FAILED TO ATTACK TRIAL COUNSEL'S HANDLING OF THE CASE REGARDING IMPEACHING EVIDENCE IN THE FORM OF A THIRD CASE (DRUG DELIVERY STEMMING FROM SAME STING OPERATION) THAT WAS "NOLLE PROSSED" FOR PROSECUTION'S KEY WITNESS ONCE HE BEGAN TO COOPERATE WITH THE POLICE TO IMPLICATE PETITIONER IN THIS CASE. (SEE EXHIBIT 6, A, B, C - CASE NO. 98CR6088) (THIS IMPEACHING EVIDENCE WAS ALSO WITHHELD BY THE PROSECUTION AT TRIAL IN VIOLATION OF BRADY DUE PROCESS) ALTHOUGH APPELLATE COUNSEL ADDRESSED THIS ISSUE TO THE COURT IN A POST-TRIAL MOTION HE DID NOT INVESTIGATE AND THIS DEPRIVED HIM OF A FAIR TRIAL

PART III - PETITIONER'S CLAIMS (CONTINUED)

(C) IN EXCHANGE FOR HIS GRAND JURY TESTIMONY AND TRIAL TESTIMONY HE WAS GIVEN IMMUNITY AND WAS NEVER CHARGED. HOWEVER, AT TRIAL MONTANEZ RECANED HIS STATEMENTS TO INVESTIGATORS, REFUSED TO TESTIFY AND PLEADED HIS FIFTH AMENDMENT RIGHT.

MONTANEZ WAS PORTRAYED TO THE JURY AS A WITNESS AND AS A CO-ACTOR IN THIS CASE AND WAS MENTIONED MANY TIMES DURING THE COURSE OF THE TRIAL. IN FACT, TRIAL TESTIMONY AS TO WHAT MONTANEZ SAID OR DID WAS OFFERED TO THE JURY BY ALL THE PROSECUTION'S WITNESSES, IGNACIO SALGADO, DETECTIVE WOJCIK AND ASA. STEPHENS AND SUCH REVELATIONS WENT WELL BEYOND THE INVESTIGATIVE PROCESS. TRIAL TESTIMONY OF DETECTIVE WOJCIK RECOUNTS THE INCULCATORY SUBSTANCE OF THE CONVERSATION WITH ANDY MONTANEZ. (SEE EXHIBIT 7 - TR. DIRECT EXAM.)

FURTHERMORE, THE COLLOQUY OF "ANDY... CORROBORATED WHAT IGGY (SALGADO) TOLD US" WAS NOT CONSIDERED IN ITS FULL CONTEXT. (SEE EXHIBITS 8, A, B, C - TR. CROSS-EXAM) THESE ITEMS ATTACHED HEREIN REVEAL THE ACCUSATORY SUBSTANCE OF THE STATEMENTS MADE BY MONTANEZ DURING HIS INTERROGATION AND HIS GRAND JURY TESTIMONY. MONTANEZ' STATEMENTS - THROUGH DETECTIVE WOJCIK'S TRIAL TESTIMONY - PLACE PETITIONER AS THE SHOOTER AND IT PORTRAYS MONTANEZ AS A WITNESS IN THIS CASE. (SEE EXHIBIT 9) AS HE ALSO INDICATED THAT BOTH "TWO WITNESSES ARE CORROBORATIVE OF ONE ANOTHER" (SEE EXHIBITS 10, 10A - TR. WOJCIK'S TESTIMONY) PETITIONER CONTENDS THAT AFOREMENTIONED COLLOQUYS WERE TESTIMONIAL EVIDENCE IN VIOLATION OF THE CONFRONTATION CLAUSE.

PROSECUTION WITNESS IGNACIO SALGADO ALSO TESTIFIED AT TRIAL ABOUT ANDY MONTANEZ ALLEGED PARTICIPATION IN THE SHOOTING (SEE EXHIBIT II, A, B - DIRECT EXAM SALGADO TESTIMONY) HE INDICATES THAT CO-DEFENDANT ALVAREZ HANDED "THESE GUYS (PETITIONER AND MONTANEZ) A GUN," THAT GATO (PETITIONER) AND ANDY WALKED OFF" AND THAT "5, 10 MINUTES LATER HE (SALGADO) HEARD SOME SHOOTING" THIS TESTIMONY IS RELEVANT ALSO BECAUSE IT AGGRAVATES DETECTIVE'S TESTIMONIAL EVIDENCE PRESENTED AT TRIAL.

FURTHERMORE, THE TRIAL COURT DID NOT INSTRUCT THE JURY AS TO THE LIMITING PURPOSE OF ANDY MONTANEZ STATEMENTS THROUGH DETECTIVE WOJCIK TRIAL TESTIMONY, EVEN IF IT DID, IT WOULD HAVE BEEN IMPOSSIBLE FOR A REASONABLE JUROR TO FOLLOW. PETITIONER RELIES ON RAY V. BOATWRIGHT 592 F.3d 793, (2010 11th DIST.) IN SUPPORT OF THIS ISSUE AS IT IS ALMOST IDENTICAL TO PETITIONER'S CASE. PETITIONER ASSERTS THAT HIS SUBSTANTIAL RIGHTS WERE VIOLATED BECAUSE HE WAS NOT ABLE TO CROSS-EXAMINE THE ONLY WITNESS WHO DIRECTLY IMPLICATED HIM TO BEING AT THE SCENE OF THE CRIME, AS TO BEING THE SHOOTER AND WHO DIRECTLY REFUTED PETITIONER'S CLAIM THAT HE (ANDY MONTANEZ) SHOT THE VICTIM. PETITIONER CONTENDS THAT IT WAS PLAIN ERROR TO ADMIT THE STATEMENTS OF DETECTIVE WOJCIK THAT "ANDY (MONTANEZ) CORROBORATED WHAT THEY (SALGADO) TOLD US" WAS HIGHLY PREJUDICIAL, IT AFFECTED JURY DELIVERATIONS AND IT DEPRIVED HIM OF A FAIR TRIAL AND ERROR WAS NOT HARMLESS.

1 A Correct.

2 MR. DARMAN: Actually I would object at this
3 time. Drug cases. I want to make sure we're all
4 clear. There were two.

5 THE COURT: So noted.

6 MR. LOPEZ:

7 Q The drug cases you were being charged
8 with, is that right?

9 A Yes.

10 Q And the detective came and started asking
11 you questions, is that right?

12 A Yes.

13 Q In fact, it was you who told the officers
14 or detectives that you wanted to speak to them, is
15 that right?

16 A Correct.

17 Q You wanted to speak to them because you
18 wanted to tell about a murder, is that right?

19 A Yes.

20 Q And you were hoping to cooperate with
21 them at that time, is that right?

22 A Correct.

23 Q And you were hoping by cooperating with
24 them that something could be done with your cases,

A Municipal Corp.

vs.

Ignacio Salgado
Defendant

Case No.(s)

98 CR 6089

Charge(s)

OC

(Statutory Citation(s))

Term of Probation:

30 Mo Prob

Month

(Description)

concurrent to 98 CR 8138

I. R. #

946229

S. I. D. #

F. B. I. #

**ORDER
SENTENCE OF PROBATION**

The Court orders that Probation is subject to the following conditions - that the defendant shall:

- (x) Not violate any criminal statute of any jurisdiction.
- (x) Refrain from possessing a firearm or other dangerous weapon.
- (x) Appear within 72 hours before the Adult Probation Department and comply with its rules and regulations.
- (x) Not leave the State of Illinois without consent of the Court or without prior notification and approval of the Adult Probation Department.
- (x) Notify the Adult Probation Department of any change of address.
- (x) Pay a Probation Fee of \$25.00 per month through the Adult Probation Department commencing immediately and for each month on Probation for the duration of the sentence.
- () Make Restitution in the amount of \$ 0 **DILLARD** payable through the Adult Probation Department on or before AUG 11 1998, 1998 at \$ 0 per month.
- () Pay FILED **CLERK OF CIRCUIT COURT** Court Costs of \$ 0 **CRIMINAL DIVISION**
- () JUDGE _____
- () Other Fines: _____ \$ _____

- () Mental Health Unit (Additional order required)
- () Employment / Vocational Training
- ☒ **COMMUNITY SERVICES:**
Perform 130 hours of community services as directed by the Probation Department, if qualified.
- () GED
- () Mandatory Work Program (Additional order required)
- () Home Confinement (Additional order required)
- () Intensive Probation Supervision (Additional order required)
- () Intensive Drug Program (Additional order required)
- () Domestic Violence Program (Additional order required)
- () Sex Offender Program (Additional order required)
- ☒ Drug Testing (Additional order required)
- () T. A. S. C.
- () Complete Alcohol and Drug Education Services Evaluation and follow recommendations.
- () Defense Counsel _____

Payment of Fines or Costs shall be as follows:

- ☐ Payable Instantly.
- ☐ Payable through Adult Probation Department.
- ☐ Payment in full on or before _____.
- ☐ Monthly payments in the amount of \$ _____ per month.

OTHER: 130 hrs community s
Drug Testing and treatment
Gang Re-education Gr

DATED: _____ ENT

I acknowledge receipt of this Order and agree to abide by the conditions. I change of address and answer any questions asked by the Court about my behavior disposition could result in a new sentence up to the maximum penalty for the offense

Defendant's Signature

2156 N Key Stone 2nd Fl

Defendant's Address

Jennifer Colman

Print Assistant State's Attorney Name

Print Defendant's Name

(773) 227-6647

Defendant's Phone Number

8/27/75

Defendant's Date of Birth

*Entered
Stamp Date
Should be
8-12-98*

Code No.

below or a
is sentence

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)

4 IN THE CIRCUIT COURT OF COOK COUNTY
5 COUNTY DEPARTMENT-CRIMINAL DIVISION

6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS)

8 vs.)

9 No. 98 CR 6089
10 and 98 CR 8138

11 IGNACIO SALGADO,)

12 Defendant.)

13 REPORT OF PROCEEDINGS

14 BE IT REMEMBERED that on the 12th day of
15 August, A.D., 1998, this cause came on for hearing
16 before the Honorable RONALD A. HIMEL, Judge of said
17 court, at the Criminal Courts Building, Room 404, 2600
18 South California Street, Chicago, Illinois at
19 approximately 9:30 a.m.

20 APPEARANCES:

21 HON. RICHARD A. DEVINE,
22 State's Attorney of Cook County, by
23 MS. JENNIFER COLEMAN,
24 Assistant State's Attorney,
on behalf of the People;

MR. GEORGE BECKER,
Attorney-at-law,
on behalf of the Defendant.

(EXHIBIT 2A)

1 THE CLERK: Cabrera and Salgado.

2 THE COURT: You are chargd with a Class 2
3 felony. Do you understand what you are charged with?

4 THE DEFENDANT: Yes.

5 THE COURT: A Class 2 felony is punishable
6 by anywhere from --

7 (Discussion was had off
8 the record.)

9 MS. COLEMAN: One is a Class 1.

10 THE COURT: Which one?

11 MS. COLEMAN: 8138 is a Class 1.

12 THE COURT: All right. You are charged with
13 a Class 1 felony. It is a probationable Class 1
14 felony. It is punishable by a minimum sentence. If
15 you were to be sentenced to the penitentiary, it would
16 be 4 years Illinois Department of Corrections, maximum
17 sentence is 15 years Illinois Department of
18 Corrections, subject to a \$200,000 fine, 3 years of
19 mandatory supervised release because of the amount of
20 drugs sold in this Class 1 felony.

21 It is probationable and in exchange for
22 your plea of guilty here today over my own objection,
23 the State's Attorney's objection and the City of
24 Chicago's objection but based on a review of the

1 Probation Department's examination showing you have no
2 prior criminal record I feel that a period of
3 probation with some intervention with help for you is
4 the appropriate sentence.

5 So after a conference I have agreed,
6 even though I don't want to, to a sentence of 30
7 months probation with the recommendations --

8 Which are on what page?

9 MS. COLEMAN: They are on page 5 -- I am
10 sorry, judge. It's on page 7.

11 THE COURT: The proposed plan. The following
12 plan benefits the defendant's rehabilitation. As part
13 of the probation, you are going to have to go --

14 Where are they talking about, the Gang
15 Intervention Unit? That would be in custody.

16 All right. The probation is going to be
17 30 months probation, 130 hours of community service,
18 substance abuse testing and treatment and gang
19 re-education groups.

20 Are you going to be able to do this?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is that what you want me to do?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand by pleading

1 guilty you are giving up your right to plead not
2 guilty and have a trial in these two matters?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand by pleading
5 guilty you are giving up your constitutional right to
6 a trial by jury?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand by pleading
9 guilty you are giving up your right to confront and
10 cross examine the State's witnesses?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand you are giving
13 up your right to call any witnesses you might have or
14 testify yourself?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that you are
17 giving up your right to force the State in each of
18 these cases to prove you are guilty beyond a
19 reasonable doubt?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You are entering these pleas of
22 guilty freely and voluntarily?

23 THE DEFENDANT: Yes.

24 THE COURT: You are only entering these pleas

1 of guilty so that -- and it is your understanding that
2 I am going to sentence you to probation, is that
3 correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: That is what you want me to do?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The court finds the defendant
8 knowingly and intelligently understands the
9 consequences of his pleas of guilty. The pleas of
10 guilty will, therefore, be accepted.

11 State, kindly advise me of the facts you
12 have that you would expect to prove if this case were
13 to go to trial so I can make a factual basis for the
14 plea of guilty, including any statements by the
15 defendant that you believe should be under oath.

16 If you will raise your right hand at
17 this time and be sworn to tell the truth.

18 (Defendant sworn.)

19 State, you may proceed.

20 MS. COLEMAN: Judge, with regard to case
21 number 98 CR 8138, if called to testify Officer
22 Tavelez (phonetic sp.), star number 11155, assigned to
23 Unit 156, Chicago Police Department, would testify
24 that he was on duty on December 12th of 1997 at

1 approximately 7:30 p.m. in the area of 4200 West
2 Armitage in Chicago, Cook County, Illinois.

3 He entered a tavern located at that
4 address and he met with the defendant whom he would
5 identify in open court as the man standing to my left
6 in the black tee shirt. The defendant approached the
7 officer --

8 THE COURT: That would be Ignacio Salgado for
9 the record?

10 MS. COLEMAN: Yes.

11 At that time the defendant approached
12 the officer, asked the officer how many bags he
13 needed. The officer said he needed 10 bags to hold
14 him over for the holidays -- I am sorry, a \$10 bag.
15 The officer then handed Salgado a \$10 bill. Salgado
16 then motioned over to a co-defendant. The
17 co-defendant came over to the undercover officer. The
18 undercover officer and the co-defendant then went into
19 another area of the bar where the undercover officer
20 was handed a bag that he believed contained suspect
21 cocaine.

22 That bag was inventoried under
23 inventory --

24 I am sorry. Do you want to just swear

1 him in to that part so far?

2 THE COURT: Is that true?

3 THE DEFENDANT: Yes, sir.

4 MS. COLEMAN: That bag was then inventoried
5 under inventory 1895637.

6 If called to testify, David Schlewitt,
7 S-c-h-l-e-w-i-t-t, would be qualified to testify as an
8 expert and to render an expert opinion within a
9 reasonable degree of scientific certainty in the field
10 of forensic chemistry. He analyzed and weighed the
11 evidence inventoried under 1895637, properly employing
12 all testing procedures commonly recognized and
13 accepted in the scientific community for ascertaining
14 the presence of a controlled substance.

15 He tested 8 of the bags and they tested
16 positive for 1.1 grams of cocaine. The additional 2
17 bags were not tested but weighed an estimated .2
18 grams.

19 MR. BECKER: Judge, we would stipulate that
20 is the State's case in chief.

21 THE COURT: The court certainly finds a
22 factual basis for a plea of guilty to that charging
23 document.

24 MS. COLEMAN: With regard to case number 98

1 CR 6089, if called to testify Officer Tavelez, star
2 number 11155, assigned to Unit 156 of the Chicago
3 Police Department would testify that he was on duty
4 on October 17th of 1997 at approximately 5:30 p.m. in
5 the area of 4200 West Armitage in Chicago, Cook
6 County, Illinois.

7 At that time he entered a tavern located
8 at that address and he met with the defendant whom he
9 would identify in open court as Ignacio Salgado
10 standing to my left in the black tee shirt.

11 When he entered the tavern, the
12 defendant approached him, asked him how many bags he
13 wanted. The undercover officer said 4. The defendant
14 then produced 4 clear plastic bags of suspect rock
15 cocaine, handed them to the officer in exchange for
16 \$40 dollars United States currency.

17 The officer then inventoried those four
18 bags under inventory number 1859394.

19 If called to testify, Monica Kinslow,
20 K-i-n-s-l-o-w, would be qualified to testify as an
21 expert and to render an expert opinion within a
22 reasonable degree of scientific certainty in the field
23 of forensic chemistry. She analyzed and weighed the
24 evidence inventoried under 1859394, properly employing

1 all tests and procedures commonly recognized and
2 accepted in the scientific community for ascertaining
3 the presence of a controlled substance.

4 She tested one of the bags and it tested
5 positive for less than .1 gram of cocaine. The
6 additional three bags were not tested but weighed an
7 estimated .2 grams.

8 MR. BECKER: Stipulate that would be the
9 State's case in chief.

10 THE COURT: The court does find a factual
11 basis for the plea of guilty. Plea of guilty, finding
12 of guilty, judgment on my finding.

13 Anything in aggravation?

14 MS. COLEMAN: Judge, the defendant has
15 several misdemeanor arrests.

16 THE COURT: Anything in mitigation?

17 Actually you have no prior convictions.

18 MR. BECKER: No felony convictions.

19 THE COURT: There is a paper trail here that
20 indicates you may not be able to finish this
21 probation. Do you understand what I am
22 saying?

23 And I got to tell you quite honestly
24 that both the State and I because of the nature of

1 these transactions would indicate that the proper
2 place for you probably is the penitentiary; and I have
3 to tell you that if you do violate any terms or
4 conditions of the probabion, so listen carefully
5 before you make your decision, some people think
6 probabion is easy but if you violate the terms and
7 conditions of probation, such as if you drop dirty,
8 okay, if you are found in possession of an illegal
9 substance, namely cocaine, we are talking about coming
10 back before me, having a hearing.

11 And there is a different burden of
12 proof. The State only has to prove by a preponderance
13 of the evidence that you violated the probation. If
14 they can show that you violated my probation, the
15 chance we are giving you here today because of all the
16 things your lawyer has indicated to us, that you at
17 this point are worth saving even though the facts in
18 these two cases would indicate you should go to the
19 penitentiary and your lack of real criminal
20 background, your age, the fact that there is some hope
21 you can lead a productive life, we are going to give
22 you that chance.

23 THE DEFENDANT: Thank you.

24 THE COURT: If you violate though, I am not

1 going to hesitate.

2 THE DEFENDANT: I understand.

3 THE COURT: We are talking about a 4 year
4 minimum sentence. So you can't drop dirty.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You can't violate any of the laws
7 of the United States. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Are we going to be able to do
10 this?

11 THE DEFENDANT: Yes.

12 THE COURT: You are sure?

13 THE DEFENDANT: Yes, I am positive.

14 THE COURT: This is what you want me to do?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I am almost hoping that you don't
17 do it because basically the police work involved here,
18 all the work that was done to clean up an area that
19 complaints are tremendous and that is almost
20 everywhere in the City of Chicago, you know. When I
21 see that the citizens and everybody is making a
22 concerted effort to rid some communities of this awful
23 disease that is happening in this country, this is the
24 awful disease of the sale and profit made from selling

1 cocaine and other drugs, we have to stop it. It is
2 destroying the whole inner structure of the city.

3 So whenever they make plans to do this
4 then the courts should set a system that if you are
5 proven guilty of these charges you should be punished
6 for this because it is such a serious crime.

7 Do you understand what I am saying?

8 THE DEFENDANT: Yes.

9 THE COURT: The only thing that saves you is
10 that you have this lack of prior criminal record, your
11 age and the fact that in some ways we can best salvage
12 and save the taxpayers some money if you will just
13 stay out of trouble and get on with your life and
14 become a useful and productive citizen.

15 If you are not willing to do that, then
16 you might as well go through that door and go to the
17 penitentiary.

18 So tell me now what you want to do.

19 THE DEFENDANT: Probabion, your Honor.

20 THE COURT: You are going to be able to
21 undergo drug tests, you are going to be able to
22 participate in this gang re-education, your ideas
23 about what your family and life should be?

24 THE DEFENDANT: Yes.

1 THE COURT: All right. After a hearing in
2 aggravation and mitigation, the sentence of this court
3 as to Ignacio Salgado is 30 months probation with a
4 proposed time of supervision for the benefit of the
5 defendant's rehabilitation as proposed by the
6 Probation Department in the pre-trial investigation.

7 So you are going to be on 30 months
8 probation on both these cases. They are going to run
9 concurrently.

10 When the Probation Department says you
11 have to be at a certain place, your only answer is
12 what time. If they tell you you have to go to drug
13 rehab, what time.

14 You can't miss any of that. That would
15 be a violation. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I have a good rapport with many
18 of the people working in the Probation Department so
19 it is not a good idea not to get along with the people
20 you are talking to from Probation.

21 THE DEFENDANT: I understand.

22 THE COURT: All right. The sentence is 30
23 months probation, conditions being the proposed
24 supervision plan set forth in the presentence

1 investigatin for the benefit of the defendant's
2 rehabilitation I can only have my fingers crossed
3 that that will happen.

4 I say to you good luck, young man, but
5 don't violate this probation. We are talking about
6 bring your toothbrush if you do.

7 THE DEFENDANT: I understand.

8 THE COURT: You certainly have a right to
9 appeal the sentence and judgment entered here today.
10 You have 30 days from today's date to file with this
11 court a written motion asking me to allow you to
12 withdraw your plea of guilty setting forth the reasons
13 why you feel I should allow you to withdraw your plea
14 of guilty. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that must be in
17 writing?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand if you are
20 indigent, I will appoint an attorney to help perfect
21 your rights to filing that motion?

22 THE DEFENDANT: Yes.

23 THE COURT: If I rule against you on that
24 motion, you will have 30 additional days to file a

1 motion for appeal and ask for a stenographic transcript
2 of the proceedings. That too must be in writing and
3 certainly if you are indigent I will appoint an
4 attorney to perfect your right to appeal. Do you
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Good luck.

8 (Which were all the proceedings
9 had in the hearing of the
10 above-entitled cause.)
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1 STATE OF ILLINOIS)
2) ss:
3 COUNTY OF C O O K)
4

5 I, LINDA K. MADISON, a Certified
6 Shorthand Reporter, do hereby certify that I reported
7 in shorthand the proceedings had in the above-entitled
8 cause and that the foregoing is a true and correct
9 transcript of my shorthand notes so taken as
10 aforesaid, and contains all the proceedings had at the
11 aforementioned hearing before the Honorable RONALD A.
12 HIMEL.

13 IN WITNESS WHEREOF, I have hereunto set
14 my hand in Chicago, Illinois this 18th day of August,
15 A.D. 2008.

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18 Official Court Reporter
19 License #084-000970
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1 STATE OF ILLINOIS)
2)
3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - CRIMINAL DIVISION

6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS)

8 -vs-) No. 98 CR 8138

9 IGNACIO SALGADO)

10 REPORT OF PROCEEDINGS had at the hearing of
11 the above-entitled cause, before the Honorable RONALD
12 A. HIMEL, Judge of said Court, on the 11th day of May,
13 A. D., 2000.

14 APPEARANCES:

15 HONORABLE RICHARD A. DEVINE,
16 State's Attorney of Cook County, by:
17 An Assistant State's Attorney,
18 appeared on behalf of the People;

19 MR. EDWIN A. BURNETTE,
20 Public Defender of Cook County, by:
21 MR. ALPHONSO PALMER,
22 Assistant Public Defender,
23 appeared on behalf of the Defendant.
24 *****

MS. BARBARA J. KIMBROUGH, CSR
Official Court Reporter
2650 South California
Room 4 C 02
Chicago, Illinois 60608

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Date of hearing: 5-11-00

Pages 1 through 8

Continuance.....

1 THE COURT: Sheet One, Ignacio Salgado.

2 THE PROBATION OFFICER: Your Honor, we ask
3 leave to file a violation of probation in that the
4 Defendant was terminated from community service the
5 third time on 4-11-2000. He also tested positive for
6 drugs two times.

7 THE COURT: What is he on my probation for?
8 Give me a hint.

9 THE PROBATION OFFICER: Narcotics.

10 THE COURT: Okay. Public Defender appointed,
11 at least to find out if the man can speak.

12 THE DEFENDANT: Yes. This is the third time
13 they switched my probation officer. The last three
14 drops, one was back August 9th, my first probation.
15 Officer never violated for that one. The third
16 probation officer that I had --

17 THE COURT: What is he testing positive for?

18 THE PROBATION OFFICER: Cocaine, marijuana.

19 THE PUBLIC DEFENDER: The first test they are
20 saying was positive back in August. And then he had a
21 second positive in January. And that was the only
22 positives. So, it appears that he had a couple of
23 short lapses.

24 THE COURT: How about the community service?

1 THE DEFENDANT: Sir, I work 55 hours a week.

2 THE COURT: That is not an excuse, sir.

3 Where do you work?

4 THE DEFENDANT: Manufacturing company in
5 Cicero.

6 THE COURT: What do you do?

7 THE DEFENDANT: Shipping and receiving.

8 THE COURT: If I tested you today, what would
9 you test?

10 THE DEFENDANT: Positive for marijuana, sir.

11 THE COURT: Positive for marijuana?

12 THE DEFENDANT: I have been clean for two
13 weeks. I have been an addict since I was 23 years old.

14 THE COURT: We are talking about cocaine?

15 THE DEFENDANT: Marijuana. No cocaine, sir.

16 THE COURT: What are we going to do about
17 this?

18 THE DEFENDANT: Sir, if I can?

19 THE COURT: Well, obviously you convinced me
20 that -- before you started speaking, when I thought
21 you didn't understand what we were doing or what had
22 happened, you now convinced me that you are
23 intelligent, you are honest, you are worth saving.
24 Tell me what I've got to do.

1 THE DEFENDANT: I will do my community
2 service.

3 THE COURT: You come this -- we can't get
4 this done.

5 You failed three times. Is that because
6 you are working so much?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: What is the community service?
9 The man is working 50 hours a week. If he has proof of
10 that, somebody in the probation office out to bring
11 that to my attention.

12 THE PROBATION OFFICER: Your Honor, the
13 Defendant was ordered to complete 130 hours.

14 THE COURT: He had a private attorney. I will
15 continue this for a month. Get him tested
16 immediately. Get a stay on the community service.

17 If we get verification he is working 55
18 hours a week, I will vacate the community service
19 portion.

20 You are allowed to fail sometimes before
21 you realize what you want to do.

22 THE DEFENDANT: Your Honor, I have been on
23 probation since August 16th of 1998. This is only the
24 second time that I have dropped. I haven't had no

arrests.

THE COURT: He has two charges. I have two cases. One is under 15 grams. The other looks like two hand-to-hand deliveries to undercover police officers at the time.

THE STATE'S ATTORNEY: Gang affiliation.

THE DEFENDANT: Yes, sir. I'm not no more.

THE COURT: What was it?

THE STATE'S ATTORNEY: The Spanish Cobras.

THE COURT: Family?

THE DEFENDANT: Yes, sir.

THE COURT: Here is what I'm going to do: I have heard from this gentleman. He says he is not having a problem with the cocaine. You tell me this marijuana is a recreation.

Here is what I want you to do: I want you to sit down with Fonz, your new attorney, and I want you to give me somebody verifying employment. I need to have him drug tested.

Hearing on violation of probation commenced and continued. I want him tested in a month from now. So, whenever you do it, that stuff stays in their system for about 28 days.

Isn't there something you can buy at

1 walgreens that covers this, Gold Seal or something?

2 At least you have been covering stuff like this.

3 I want to know if he is using cocaine. I don't
4 necessarily want him to be dropped today. What I want
5 him to do is not interrupt his work.

6 I want probation to be a little more
7 agreeable with this young man's work schedule. If he
8 is working -- that community service is a nice thing.
9 But if he is working 55 hours, a new Petition -- we
10 will make the modification and in fact we will have
11 the hearing next time it is up.

12 If he is not positive for cocaine,
13 verification of working for good cause shown, honesty
14 being one of them, we will terminate satisfactorily
15 next month. But let's have a hearing.

16 Violation of probation hearing commenced
17 and continued. Cocaine -- you test him today. He
18 said he used marijuana two weeks ago?

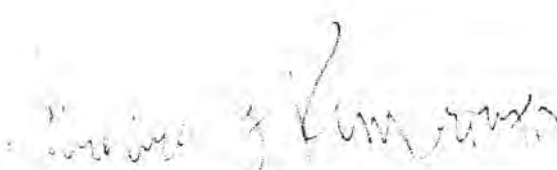
19 MR. PALMER: He is going to test positive for
20 marijuana. That, we know.

21 THE COURT: 6-15 is fine, 2000.

22 (WHEREUPON, further proceedings in
23 the above-entitled cause were
24 continued to 6-15-00).

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
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7 I, BARBARA J. KIMBROUGH, CSR, Official Court
8 Reporter of the Circuit Court of Cook County, County
9 Department - Criminal Division, do hereby certify that
10 I reported in shorthand the proceedings had at the
11 hearing in the above-entitled cause; that I thereafter
12 caused to be transcribed into typewriting the above
13 Report of Proceedings, which I hereby certify is a
14 true and correct transcript of the proceedings heard
15 on said date, before the Honorable RONALD A. HIMEL,
16 Judge of said court.

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19 _____
20 Official Court Reporter
21 Circuit Court of Cook County
22 Criminal Division
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1 THE COURT: I sustained it.

2 MR. LOPEZ:

3 Q That was September 28th, 1990 when you
4 were 17 years old, is that right? Or 16 years
5 old?

6 A I believe so, correct.

7 Q And when you used the name Ignacio
8 Salgado, that was in 1993 and you were no longer a
9 minor, is that right?

10 A Correct.

11 Q And while you were on probation, you also
12 violated your probation, didn't you?

13 A Yes. I didn't finish my community service
14 because I was working 55 hours a week.

15 Q You still violated it, is that right?

16 A Yes.

17 Q And then in June, your probation was
18 terminated, is that right?

19 A Yes, I showed proof to the Judge that I
20 was doing 55 hours of work per week and that I was
21 taking care of my son and I was unable to finish
22 my community service and do my hours.

23 Q So the Judge gave you an award?

24 A Yes, he let me finish my probation early

1 because he thought that was too much time for me
2 to be doing probation for.

3 Q He was also happy you were testifying in
4 a murder case too, wasn't he?

5 MR. MALONEY: Objection.

6 MR. DARMAN: Objection.

7 THE COURT: Sustained to what the Judge
8 thought.

9 MR. LOPEZ:

10 Q The State's Attorney was happy you were a
11 witness in a murder case?

12 MR. MALONEY: Objection.

13 MR. DARMAN: Objection.

14 THE COURT: Sustained.

15 MR. LOPEZ:

16 Q You don't think the State intervened at
17 all in your Violation of Probation while you were
18 a state witness in this case?

19 MR. DARMAN: Objection.

20 MR. MALONEY: Objection.

21 THE COURT: I sustain the objection.

22 MR. LOPEZ:

23 Q Now, again, in 1995, at the time of the
24 meeting, I think you said there was about 15 or 20.

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - CRIMINAL DIVISION

6 PEOPLE OF THE STATE)
7 OF ILLINOIS,) Criminal
8)
9 Plaintiff,)
10)
11 VS) Case No. 98 CR 6088
12) 98 CR 8138
13 IGNACIO SALGADO,)
14)
15 Defendant.)

16 REPORT OF PROCEEDINGS had at the
17 hearing of the above-entitled cause, before the
18 HONORABLE RONALD A. HIMEL, Judge of said court, on the
19 15th day of June, A.D., 2000.

20 PRESENT:

21 MR. RICHARD A. DEVINE,
22 State's Attorney of Cook County, by:
23 UNIDENTIFIED STATE'S ATTORNEY,
24 Assistant State's Attorney,
appeared for the people;

UNIDENTIFIED DEFENSE ATTORNEY,

Cecilia A. Peterson, CSR
Official Court Reporter
Circuit Court of Cook County
Criminal Division
CSR # 084-001826

EXHIBIT 5

1 Proceedings of 6-15-00
2 Pages 1 through 4

3 I N D E X

4 probation terminated.....3
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1 THE CLERK: Ignacio Salgado.

2 UNIDENTIFIED SPEAKER: Judge, you will recall this
3 is a case we had up about a month ago. Your Honor had
4 him tested that day to see if he was going to test
5 positive or negative. I attempted to contact his job.
6 They never contacted me back but he did bring his
7 most recent pay stub where he brought yesterday with
8 13 hours of overtime. Judging by the fact he's
9 informed me the type of work they do the main office
10 they're usually not in the office, they're usually on
11 the floor.

12 THE COURT: Where is he or --

13 THE PROBATION OFFICER: 2-10-2001.

14 THE COURT: Recommit to probation, original terms.

15 UNIDENTIFIED PUBLIC DEFENDER: Your Honor, can
16 you just terminate it because of his work?

17 THE COURT: Probation terminated satisfactorily.

18 (WHICH WERE ALL THE
19 PROCEEDINGS HAD IN THE
20 ABOVE-ENTITLED CAUSE)
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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT - CRIMINAL DIVISION

5 I, CECILIA A. PETERSON, Official Court
6 Reporter of the Circuit Court of Cook County, County
7 Department - Criminal Division, do hereby certify that
8 I transcribed the foregoing Report of Proceedings
9 from the notes of CHRISTINA ADAMS, a Certified
10 Shorthand Reporter, and that the foregoing is a true
11 and correct transcript of said Report of Proceedings
12 as appears from the stenotype notes had before the
13 Honorable RONALD A. HIMEL, Judge of said court.

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17 *Cecilia A. Peterson*
18 Official Court Reporter

19 Dated this 28th day of July, 2009.
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CASE: 98CR0608801 S (START OF FELONY CASE) PAGE: 001 OF 004 PROD
DEFENDANT NAME: IGNACIO SALGADO LST APPEAL:
GENERAL INFORMATION
CB: 010967420 IR: 0946229 SID: FBI: RD: B667198

ATTORNEY INFORMATION

SEQ	ATTY NBR	ATTORNEY NAME	FIRST APPEAR	ASSIGN CD
001	51060	BECKER GEORGE E	042498	A

CHARGE INFORMATION

NBR	A	TYPE	CLASS	CHAPTER/SECTION	DESCRIPTION
001	F	1	720-570/401(C)	(2)	MANU/DEL 01-15 GR COCAINE

DISPOSITION INFORMATION

ENTER=CONT PF3=RETN PF7=BKW PF8=FRW PF9=APPL PF10=RESET PF12=PRINT CLEAR=EXIT
=> PRINT THE FOLLOWING PAGES PAGE: 001 THRU 004 DESTINATION _____

EXHIBIT 6

CASE: 98CR0608801 S (START OF FELONY CASE) PAGE: 002 OF 004 PROD
DEFENDANT NAME: IGNACIO SALGADO LST APPEAL:

022798-
IND/INFO-CLK OFFICE-PRES JUDGE 031398 1701 CR0608801 I
98CR0608801 ID# CR100171164
CLERK'S OFFICE 26TH & CALIFORNIA 0900 AM

031398-
CASE ASSIGNED 031398 1731
FITZGERALD, THOMAS R.
ROOM 101 26TH & CALIFORNIA 0930 AM

031398-
DEFENDANT ON BOND
HIMEL, RONALD A.
ROOM 206 26TH & CALIFORNIA

031398-
MOTION DEFT - CONTINUANCE - MD 042498
HIMEL, RONALD A.
ROOM 206 26TH & CALIFORNIA 0930 AM

ENTER=CONT PF3=RETN PF7=BKW PF8=FRW PF9=APPL PF10=RESET PF12=PRINT CLEAR=EXIT
=> PRINT THE FOLLOWING PAGES PAGE: 001 THRU 004 DESTINATION _____

6A

CASE: 98CR0608801 S (START OF FELONY CASE) PAGE: 003 OF 004 PROD
DEFENDANT NAME: IGNACIO SALGADO LST APPEAL:

042498-
DEFENDANT ON BOND
ROOM 206 26TH & CALIFORNIA

042498-
APPEARANCE FILED
ROOM 206 26TH & CALIFORNIA

042498-
CONTINUANCE BY AGREEMENT 052998
ROOM 206 26TH & CALIFORNIA 0930 AM

052998-
DEFENDANT ON BOND
HIMEL, RONALD A.
ROOM 206 26TH & CALIFORNIA

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CASE: 98CR0608801 S (START OF FELONY CASE) PAGE: 004 OF 004 PROD
DEFENDANT NAME: IGNACIO SALGADO LST APPEAL:
052998-
NOLLE PROSEQUI C001
HIMEL, RONALD A.
ROOM 206 26TH & CALIFORNIA

052998-
DEF DEMAND FOR TRIAL
HIMEL, RONALD A.
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60

1 during that conversation?

2 A. For the most part the state's attorney,
3 Miss Stephens, but I would ask some questions also at
4 that time. This was the first time that he was
5 admitting something to us. So, I was asking some
6 questions also.

7 MR. DARMAN: May I have one brief moment,
8 Judge?

9 Q. Detective -- I am sorry. Sergeant, you
10 told us at one point during your investigation in your
11 conversations with Mr. Suastegui, you showed him a
12 photograph of Andy Montanez and told him that you had
13 heard another version of the shooting of Daniel Matias,
14 is that correct?

15 A. That's correct.

16 Q. To your knowledge, had you or your
17 partner ever shown Manuel Suastegui a photograph of
18 Andy Montanez prior to that?

19 A. Yes, we had.

20 Q. When was that?

21 A. That was in the initial interview the
22 first interview where he was looking at pictures, and
23 he identified Ramiro and Iggy. In those group of
24 pictures with Iggy, we had a picture of Andy Montanez

1 A. Tiger. That's correct.

2 Q. And the gang book is kept in the area, is
3 that right?

4 A. Yes.

5 Q. And that's the known members of certain
6 gangs are in different books, is that correct?

7 A. Correct.

8 Q. And there's several books besides the
9 book -- and -- and what I'm trying to stress is for
10 every gang you try to keep a book of photos more or
11 less, is that right?

12 A. Well, in Area 5, it's people that we
13 arrest for the most part that are in those books.
14 There may be 14 districts that has their gangs book,
15 gang investigation it has their gangs books. Our's
16 aren't as inclusive as others. So, our's, we keep what
17 we can in there.

18 Q. And the book that you showed him, I'm
19 talking about Iggy, that contained photos of known
20 Spanish Cobras, is that right?

21 A. Yes.

22 Q. To your area?

23 A. Yes.

24 Q. Now, you indicated that after you talked

1 to -- to Ignacio Salgado, he gave you a name of Andy,
2 is that right?

3 A. That's correct.

4 Q. And you were trying to identify who Andy
5 was at that time, is that right?

6 A. That's correct.

7 Q. And you eventually were able to find out
8 who Andy was, is that correct?

9 A. Yes.

10 Q. And that was a person by the name of Andy
11 Montanez, is that right?

12 A. That's correct.

13 Q. And that's the same Andy Montanez that
14 appears in -- in photos from number -- People's Exhibit
15 40, those three photos, is that right?

16 A. That's correct.

17 Q. So, between January of 98 and until --
18 when was it that you located Andy Montanez, do you
19 recall?

20 A. It was in August of 99.

21 Q. And where was he located? Do you recall?

22 A. We found out that he was in custody in a
23 youth facility. I believe it was Harrisburg. We had
24 him remanded to Cook County. He was an adult at the

1 time, but he was in custody for something he had done
2 when he was a juvenile. We had him brought to Cook
3 County. We picked him up from Cook County to interview
4 him in regards to this incident.

5 Q. And he gave you a handwritten statement,
6 didn't he?

7 A. Yes.

8 Q. After you spoke to Andy, then you went
9 out to look for Ramiro Alvarez, is that right?

10 A. Well, we talked to Andy, and he
11 corroborated what Iggy told us. So, at that point, we
12 want to speak to Iggy again. And on the 30th -- this
13 is when we made contact with Iggy. On the 31st, Iggy
14 went to the grand jury. And on September 1 is when we
15 arrested your client.

16 Q. Okay.

17 So, after you talked to Montanez
18 who was in custody when you spoke to him, he gave you a
19 statement?

20 MR. MALONEY: Objection.

21 MR. DARMAN: Objection.

22 THE COURT: Basis?

23 MR. DARMAN: Judge this is something that we
24 went into earlier.

1 MR. MALONEY: Can we have a sidebar, Judge?

2 THE COURT: Not at this time. I'll allow it.

3 I would respectfully overrule the objection. I

4 understand where you're going.

5 MR. LOPEZ:

6 Q. And then after the statement and after
7 this -- this grand jury, then you found Mr. Suastegui,
8 is that correct?

9 A. Correct.

10 Q. Okay.

11 Ignacio Salgado testified in the
12 grand jury on August 31 of 99, is that right?

13 A. That's correct.

14 Q. In fact, you drove him here. Maybe, not
15 you, but either you or Engel drove him here to this
16 building to testify, is that right?

17 A. Yeah. We picked him up. That's correct.

18 Q. You brought him here, and he testified in
19 front of the grand jury, correct?

20 A. That is correct.

21 Q. Now, after that, Mr. Suastegui was
22 located, is that right?

23 A. The next day. That's correct.

24 Q. And that would be on September 1, is that

1 in it, is that correct?

2 A. That's correct.

3 Q. He only picked two Cobras out of that
4 book?

5 A. That's incorrect. That's not what I
6 said. I said he identified several people.

7 Q. Okay.

8 A. Many people. But the ones we were
9 interested in were Tiger and -- and Iggy, and he did
10 not identify Montanez at that time, but he identified
11 lot of guys that he knew to be Cobras.

12 Q. What were their names?

13 A. I didn't document everybody he said he
14 knew. He said I know this guy. Who is that? That's
15 Junior. That's Shorty. Who is this?

16 Q. Why didn't you document it?

17 A. Because they weren't germane to our
18 investigation.

19 Q. How did you know that?

20 A. Because he hadn't told me that any of
21 those -- we had no information that Junior or Shorty
22 had done anything. We had information about Iggy being
23 involved. As far as a witness, we had information
24 about Andy. We had information about Gato. So, when

1 information to charge him with the murder, is that
2 correct?

3 A. Yes.

4 Q. So, you didn't really need to talk to
5 him, did you?

6 A. That's part of normal investigation to
7 interview somebody, you know. I mean, we have two
8 people stating he had done the shooting. We're going
9 to interview him to see what he says about it.

10 Q. Okay.

11 No matter what he said, you
12 wouldn't uncharge him?

13 A. Well, he could tell me he was in
14 Minnesota. And if I could prove he was in Minnesota at
15 the time, then I know two people were lying. So, we
16 have to interview the arrestee.

17 Q. Okay.

18 In this case, I mean you weren't
19 present at the shooting, is that right?

20 A. No, I was not.

21 Q. So, you don't really know what the truth
22 is, do you?

23 MR. MALONEY: Objection.

24 THE COURT: I'll let the witness answer.

1 A. I believe that he was involved because
2 the two witnesses are corroborative of one another.
3 And it fits what I know the evidence can show, where
4 the victim was struck, how the bullets went through his
5 body, where the shots would have been fired from. It's
6 all consistent.

7 MR. LOPEZ: Okay.

8 Q. You don't know who actually did the
9 shooting, though, do you?

10 A. I believe your client did the shooting.

11 Q. You don't know if Andy did the shooting,
12 do you?

13 A. I don't believe Andy did it, no.

14 Q. But you don't know because you weren't
15 there, right?

16 A. I was not there.

17 Q. So, you're just -- that's just your
18 opinion, is that right?

19 A. My opinion, but -- yes, that's correct.

20 Q. And Andy could be the shooter, couldn't
21 he?

22 MR. MALONEY: Objection. Form of the question,
23 Judge.

24 THE COURT: I'd sustain the objection.

1 MR. BECKER: Objection, asked and answered,
2 he already said no.

3 THE COURT: I sustain the objection.

4 MR. DARMAN: All right Judge.

5 Q Did you see Tiger do anything at that
6 time?

7 A I remember him handing these guys a gun.

8 Q What did the gun look like?

9 A I think it was a blue steel revolver.

10 Q Who did he hand it to?

11 A Goto.

12 Q To this guy here?

13 A Yes.

14 Q When he handed him the revolver, what
15 happened next?

16 A He was on the side with Andy.

17 MR. LOPEZ: I can't hear anything he's
18 saying.

19 A He was on the side.

20 MR. DARMAN: If you show him the microphone.

21 THE DEPUTY: It's not working.

22 THE COURT: Microphone is not working.

23 You're welcome to move up here if you like, pull
24 your chair up here.

1 MR. DARMAN:

2 Q Mr. Salgado, you have to keep your voice
3 up okay.

4 THE COURT: All the jurors hear? If you can
5 raise your hand if you cannot. Let me know when
6 he drops his voice, I'll have him repeat the
7 answer.

8 MR. DARMAN: All right.

9 Q You said Tiger gave Goto a gun, you say
10 he give him a blue steel revolver, right?

11 A Yes.

12 Q And there was a guy Andy standing there
13 too, right?

14 A Yes.

15 Q What happened next?

16 A They walked off.

17 Q Who walked off?

18 A Goto and Andy.

19 Q What happened to you?

20 A I walked off on my own, stayed in the
21 hood.

22 Q Were you given any instructions from
23 Tiger at that point in time?

24 A To leave the hood alone, disappear.

1 Q What happened next?

2 A 5, 10 minutes later, I hear some
3 shooting, you know.

4 Q You heard some shooting?

5 A Yeah.

6 Q What happened next?

7 A Ran out like I go to Armitage and Keeler
8 because that's where I was waiting on a taco. I'm
9 over there.

10 Q Can you speak up a little bit, sir?

11 A I go to Armitage and Keeler, and on my
12 way towards Armitage and Keeler that's when I hear
13 the shooting.

14 Q Okay.

15 A I'm waiting there, you know, I just hear
16 the shooting and that's when I know it went down.

17 Q All right.

18 MR. BECKER: Objection.

19 THE COURT: Sustained.

20 MR. LOPEZ: Objection.

21 THE COURT: Sustained.

22 MR. DARMAN:

23 Q You're at Armitage and Keeler?

24 A Correct.

1 intent for this to be in your hands before noon
2 tomorrow. So, we are starting earlier, and we hope
3 that we will be finished and have the case in your
4 hands. We will see you tomorrow at 9:30 a.m..

5 THE SHERIFF: All rise for the jury.

6 (The following proceedings
7 were had out of the
8 hearing of the jury:)

9 THE COURT: At 9:30, we will see you, Mr.
10 Becker, in the morning. You are welcome to stay for
11 the balance if you wish.

12 MR. BECKER: I think there might be too many
13 problems that might arise.

14 THE COURT: Okay. You may bring the jury out
15 then, the Suastegui jury.

16 The record should reflect that
17 we've excused the Alvarez jury for the evening. We are
18 calling back the Suastegui jury for cross-examination
19 and any redirect.

20 MR. DARMAN: For the record, earlier on,
21 counsel, Mr. Lopez, and myself had some discussions
22 about mentioning Mr. Montanez.

23 But because of the turn that this
24 case has taken, and we discussed this in the back

1 earlier, we were going to be mentioning Mr. Montanez
2 originally. But we're not planning on putting on Mr.
3 Suastegui's statement. But because of your ruling,
4 your evidentiary rulings, we're going to do that now.

5 And this detective, I had
6 discussions with earlier about not mentioning Montanez
7 when the state of the case was different. What I've
8 asked Mr. Lopez is if he minds at this point in time if
9 I tell the detective that it's okay to mention Mr.
10 Montanez and he said that's fine with him, is that
11 correct, Joe?

12 MR. LOPEZ: That's fine.

13 THE COURT: If there is any area which you
14 think should not be mentioned, I'll let you lead in
15 that area.

16 MR. DARMAN: We have discussed the fact, Judge,
17 there is to be no mention of the word polygraph. We
18 can say test -- or not even really test, another
19 investigation, something that doesn't say polygraph.

20 THE COURT: Right.

21 MR. DARMAN: So, we can mention Andy Montanez.

22 THE SHERIFF: All rise for the jury.

23 MR. DARMAN: Can you hold on, Carol?

24 We can mention -- if it's all right

EX. 12A

1 questions, but it came out on the State's direct.

2 MR. DARMAN: I know Mr. Becker asked several
3 questions. I am not sure if Mr. Lopez did or not. It
4 did come up in front of both juries.

5 MR. LOPEZ: Before we get into any inquiry
6 about about Mr. Suastegui's statement, I'm asking again
7 if I can open up my opening statement to get into this.
8 I didn't address that in my opening statement because
9 the State indicated they weren't going to use it. So,
10 I didn't touch it. So, I'm asking, before we get into
11 it, that I be allowed to reopen my opening statement
12 and talk to the jury about it and explain to them
13 what's going on.

14 THE COURT: I'll leave that for closing
15 argument. I would respectfully deny your request.

16 MR. DARMAN: Judge, just so the record's clear,
17 when the State had indicated that it wasn't going to
18 call or wasn't going to put in Mr. Suastegui's
19 statement, that was several days ago, long before the
20 judge's -- long before your Honor's evidentiary ruling
21 that Andy Montanez could not testify. We certainly had
22 no intention to sandbag counsel or anything.

23 THE COURT: I understand. So does Mr. Lopez.

24 MR. DARMAN: Thank you.

Ex. 13

1 the 9th? Is that too soon?

2 THE COURT: That's fine.

3 MR. BECKER: Can we do it the 9th then?

4 THE COURT: By agreement 12-9 for post-trial
5 motions. We stand in recess for lunch until 2:15. No
6 objection to the exhibits, Mr. Lopez?

7 MR. LOPEZ: No objection.

8 (Whereupon, there was a recess
9 had in the above-entitled
10 cause, after which the
11 following proceedings were had:)

12 THE COURT: I have a question from the jury.
13 I'll hear the lawyers in chambers.

14 Question number one. Did Gato sign
15 the statement as to being the lookout, question mark.
16 I've written in the answer, no. Or was his admission
17 on a tape recording, did he testify before the grand
18 jury? As to the second two questions, I simply
19 answered you have all of the evidence. Please continue
20 to deliberate.

21 MR. LOPEZ: The Defense requested that you
22 answer the other two questions just for the record
23 admission on tape recording no and testified before the
24 jury no. That's what we'd request the Court to do.

EX. 14